IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE: PHILIPS RECALLED CPAP, BI-LEVEL PAP, AND MECHANICAL VENTILATOR PRODUCTS LITIGATION	:	**Master Docket: Misc. No. 21-mc-1230-JFC**
	:	**MDL No. 3014**
	:	**SHORT FORM COMPLAINT FOR PERSONAL INJURIES, DAMAGES, AND DEMAND FOR JURY TRIAL**
This Document Relates to: THOMAS HENRY WHITTAKER	:	

Plaintiff(s) incorporate(s) by reference the Amended Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial filed in *In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Litigation*, MDL No. 3014, Master Docket Misc. No. 21-mc-1230 (the "Master Long Form Complaint"). This Short Form Complaint adopts the allegations, claims, and requested relief as set forth in the Master Long Form Complaint. As necessary herein, Plaintiff(s) may include: (a) additional claims and allegations against Defendants; and/or (b) additional claims and allegations against other Defendants not listed in the Master Long Form Complaint.

Plaintiff(s) further allege(s) as follows:

I. DEFENDANTS

1. Plaintiff(s) name(s) the following Defendants in this action:

☑ Koninklijke Philips N.V.

☑ Philips North America LLC.

☑ Philips RS North America LLC.

☑ Philips Holding USA Inc.

☑ Philips RS North America Holding Corporation.

☑ Polymer Technologies, Inc.

☑ Polymer Molded Products LLC.

II. PLAINTIFF(S)

2. Name of Plaintiff(s):
THOMAS HENRY WHITTAKER

3. Name of spouse of Plaintiff (if loss of consortium claim is being made):
N/A

4. Name and capacity (*i.e.*, executor, administrator, guardian, conservator, etc.) of other Plaintiff, if any:
N/A

5. State(s) of residence of Plaintiff(s) (if the Recalled Device user is deceased, residence at the time of death):
FLORIDA

III. DESIGNATED FORUM

6. Identify the forum (United States District Court and Division) in which the Plaintiff would have filed in the absence of direct filing:
United States District Court Middle District of Florida, Orlando Division.

IV. USE OF A RECALLED DEVICE

7. Plaintiff used the following Recalled Device(s):

☐ *E30 (Emergency Use Authorization)*	☐ *Dorma 500*
☐ *DreamStation ASV*	☐ *REMstar SE Auto*
☐ *DreamStation ST, AVAPS*	☐ *Trilogy 100*
☐ *SystemOne ASV4*	☐ *Trilogy 200*
☐ *C-Series ASV*	☐ *Garbin Plus, Aeris, LifeVent*
☐ *C-Series S/T and AVAPS*	☐ *A-Series BiPAP Hybrid A30 (not marketed in U.S.)*
☐ *OmniLab Advanced +*	☐ *A-Series BiPAP V30 Auto*
☐ *SystemOne (Q-Series)*	☐ *A-Series BiPAP A40*
☑ *DreamStation*	☐ *A-Series BiPAP A30*
☐ *DreamStation Go*	☐ *Other Philips Respironics Device*; if other, identify the model:
☐ *Dorma 400*	_____

V. INJURIES

8. Plaintiff alleges the following physical injuries as a result of using a Recalled Device together with the attendant symptoms and consequences associated therewith:

☐ COPD (new or worsening)

☐ Asthma (new or worsening)

☐ Pulmonary Fibrosis

☑ Other Pulmonary Damage/Inflammatory Response

☑ Cancer Kidney (specify cancer)

☑ Kidney Damage

☐ Liver Damage

☐ Heart Damage

☐ Death

☐ Other (specify)

VI. CAUSES OF ACTION/DAMAGES

9. As to Koninklijke Philips N.V., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

☑ Count I: Negligence

☑ Count II: Strict Liability: Design Defect

☑ Count III: Negligent Design

☑ Count IV: Strict Liability: Failure to Warn

☑ Count V: Negligent Failure to Warn

☑ Count VI: Negligent Recall

☐ Count VII: Battery

☑ Count VIII: Strict Liability: Manufacturing Defect

☑ Count IX: Negligent Manufacturing

☑ Count X: Breach of Express Warranty

☑ Count XI: Breach of the Implied Warranty of Merchantability

☑ Count XII: Breach of the Implied Warranty of Usability

☑ Count XIII: Fraud

☑ Count XIV: Negligent Misrepresentation

☑	Count XV:	Negligence Per Se
☑	Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
☑	Count XVII:	Unjust Enrichment
☑	Count XVIII:	Loss of Consortium
☐	Count XIX:	Survivorship and Wrongful Death
☐	Count XX:	Medical Monitoring
☑	Count XXI:	Punitive Damages
☐	Count XXII:	Other [specify below]

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10. As to Philips North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

☑	Count I:	Negligence
☑	Count II:	Strict Liability: Design Defect
☑	Count III:	Negligent Design
☑	Count IV:	Strict Liability: Failure to Warn
☑	Count V:	Negligent Failure to Warn
☑	Count VI:	Negligent Recall
☐	Count VII:	Battery
☑	Count VIII:	Strict Liability: Manufacturing Defect
☑	Count IX:	Negligent Manufacturing

☑	Count X:	Breach of Express Warranty
☑	Count XI:	Breach of the Implied Warranty of Merchantability
☑	Count XII:	Breach of the Implied Warranty of Usability
☑	Count XIII:	Fraud
☑	Count XIV:	Negligent Misrepresentation
☑	Count XV:	Negligence Per Se
☑	Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
☑	Count XVII:	Unjust Enrichment
☑	Count XVIII:	Loss of Consortium
☐	Count XIX:	Survivorship and Wrongful Death
☐	Count XX:	Medical Monitoring
☑	Count XXI:	Punitive Damages
☐	Count XXII:	Other [specify below]

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11. As to Philips RS North America LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

☑	Count I:	Negligence
☑	Count II:	Strict Liability: Design Defect
☑	Count III:	Negligent Design
☑	Count IV:	Strict Liability: Failure to Warn

☑	Count V:	Negligent Failure to Warn
☑	Count VI:	Negligent Recall
☐	Count VII:	Battery
☑	Count VIII:	Strict Liability: Manufacturing Defect
☑	Count IX:	Negligent Manufacturing
☑	Count X:	Breach of Express Warranty
☑	Count XI:	Breach of the Implied Warranty of Merchantability
☑	Count XII:	Breach of the Implied Warranty of Usability
☑	Count XIII:	Fraud
☑	Count XIV:	Negligent Misrepresentation
☑	Count XV:	Negligence Per Se
☑	Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
☑	Count XVII:	Unjust Enrichment
☑	Count XVIII:	Loss of Consortium
☐	Count XIX:	Survivorship and Wrongful Death
☐	Count XX:	Medical Monitoring
☑	Count XXI:	Punitive Damages
☐	Count XXII:	Other [specify below]

12. As to Philips Holding USA Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

☑	Count I:	Negligence
☑	Count II:	Strict Liability: Design Defect
☑	Count III:	Negligent Design
☑	Count IV:	Strict Liability: Failure to Warn
☑	Count V:	Negligent Failure to Warn
☑	Count VI:	Negligent Recall
☐	Count VII:	Battery
☑	Count VIII:	Strict Liability: Manufacturing Defect
☑	Count IX:	Negligent Manufacturing
☑	Count X:	Breach of Express Warranty
☑	Count XI:	Breach of the Implied Warranty of Merchantability
☑	Count XII:	Breach of the Implied Warranty of Usability
☑	Count XIII:	Fraud
☑	Count XIV:	Negligent Misrepresentation
☑	Count XV:	Negligence Per Se
☑	Count XVI:	Consumer Fraud and/or Unfair and Deceptive Practices Under State Law
☑	Count XVII:	Unjust Enrichment
☑	Count XVIII:	Loss of Consortium
☐	Count XIX:	Survivorship and Wrongful Death
☐	Count XX:	Medical Monitoring

☑ Count XXI: Punitive Damages

☐ Count XXII: Other [specify below]

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13. As to Philips RS North America Holding Corporation, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

☑ Count I: Negligence

☑ Count II: Strict Liability: Design Defect

☑ Count III: Negligent Design

☑ Count IV: Strict Liability: Failure to Warn

☑ Count V: Negligent Failure to Warn

☑ Count VI: Negligent Recall

☐ Count VII: Battery

☑ Count VIII: Strict Liability: Manufacturing Defect

☑ Count IX: Negligent Manufacturing

☑ Count X: Breach of Express Warranty

☑ Count XI: Breach of the Implied Warranty of Merchantability

☑ Count XII: Breach of the Implied Warranty of Usability

☑ Count XIII: Fraud

☑ Count XIV: Negligent Misrepresentation

☑ Count XV: Negligence Per Se

☑ Count XVI: Consumer Fraud and/or Unfair and Deceptive Practices Under State Law

☑ Count XVII: Unjust Enrichment

☑ Count XVIII: Loss of Consortium

☐ Count XIX: Survivorship and Wrongful Death

☐ Count XX: Medical Monitoring

☑ Count XXI: Punitive Damages

☐ Count XXII: Other [specify below]

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14. As to Polymer Technologies, Inc., Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

☑ Count I: Negligence

☑ Count II: Strict Liability: Design Defect

☑ Count III: Negligent Design

☑ Count IV: Strict Liability: Failure to Warn

☑ Count V: Negligent Failure to Warn

☑ Count VIII: Strict Liability: Manufacturing Defect

☑ Count IX: Negligent Manufacturing

☑ Count XIII: Fraud

☑ Count XIV: Negligent Misrepresentation

☑ Count XVII: Unjust Enrichment

☑ Count XVIII: Loss of Consortium

☐ Count XIX: Survivorship and Wrongful Death

☐ Count XX: Medical Monitoring

☑ Count XXI: Punitive Damages

☐ Count XXII: Other [specify below]

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15. As to Polymer Molded Products LLC, Plaintiff(s) adopt(s) the following claims asserted in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial, and the allegations and prayer for relief with regard thereto, as set forth therein:

☑ Count I: Negligence

☑ Count II: Strict Liability: Design Defect

☑ Count III: Negligent Design

☑ Count IV: Strict Liability: Failure to Warn

☑ Count V: Negligent Failure to Warn

☑ Count VIII: Strict Liability: Manufacturing Defect

☑ Count IX: Negligent Manufacturing

☑ Count XIII: Fraud

☑ Count XIV: Negligent Misrepresentation

☑ Count XVII: Unjust Enrichment

☑ Count XVIII: Loss of Consortium

☐ Count XIX: Survivorship and Wrongful Death

☐ Count XX: Medical Monitoring

☑ Count XXI: Punitive Damages

☐ Count XXII: Other [specify below]

16. If additional claims against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial are alleged above, the additional facts, if any, supporting these allegations must be pleaded. Plaintiff(s) assert(s) the following additional factual allegations against the Defendants identified in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial:

17. Plaintiff(s) contend(s) that additional parties may be liable or responsible for Plaintiff(s)' damages alleged herein. Such additional parties, who will be hereafter referred to as Defendants, are as follows (must name each Defendant and its citizenship):

SOCLEAN, INC.

18. Plaintiff(s) assert(s) the following additional claims and factual allegations against other Defendants named in Paragraph 16 above:

Plaintiff Thomas Whittaker purchased SoClean in 2020, to clean his Philips CPAP machine. Plaintiff used his SoClean regularly for the period of 1 year. Plaintiff considers efficiency and safety when making his purchases and decisions. He would not have purchased SoClean if he knew what he knows now about the SoClean. He also paid more for SoClean because he believed the product used activated oxygen and was safe and healthy. Prior to purchasing his SoClean device, Plaintiff heard and saw SoClean's claims on adverting and the packaging claiming the device used activated oxygen and was safe and healthy, and easy to use as cleaning a CPAP machine is one of the most important things a CPAP user has to do on a daily basis. Plaintiff relied on these representations in purchasing the SoClean. During that time, based on SoClean's omissions and false and misleading claims, warranties, representations, advertisements, and other marketing, Plaintiff was unaware that these products emitted ozone, and would not have purchased the device or paid as much for it is that information was fully disclosed. Plaintiff was injured by paying a premium for a device that has no or very little value - or whose value was at least less than what he paid - based on the presence of ozone. After starting to use his SoClean device, Plaintiff has experienced and continues to experience respiratory irritation. Plaintiff has suffered anguish and concern since it has been revealed that these products emit

WHEREFORE, Plaintiff(s) pray(s) for relief and judgment against Defendants and all such further relief that this Court deems equitable and just as set forth in the Master Long Form Complaint for Personal Injuries, Damages and Demand for Jury Trial and any additional relief to which Plaintiff(s) may be entitled.

Date: Jun 23 2023

/s/ Christopher J. Bilecki

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